

# PART 6

## COMPETITION REQUIREMENTS

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### 6.001 Applicability.

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#### *FAR as of FAC 90-25*

This part applies to all acquisitions except—  
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#### *FAR as revised*

This part applies to all acquisitions except—  
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**(f) Orders placed against task order and delivery order contracts entered into pursuant to Subpart 16.5. [FAC 90-33]**

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### 6.202 Establishing or maintaining alternative sources.

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#### *FAR as of FAC 90-25*

(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would—

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition, ~~of such supplies or services;~~

(2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization; or

(3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

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#### *FAR as revised*

(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would—

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition;

(2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization;

(3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

**(4) Ensure the continuous availability of a reliable source of supplies or services;**

**(5) Satisfy projected needs based on a history of high demand; or**

**(6) Satisfy a critical need for medical, safety, or emergency supplies.**

[FAC 90-31]

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**6.203 Set-asides for small business concerns.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
6.203 Set-asides for small business <del>and labor surplus area concerns.</del>	6.203 Set-asides for small business.
(a) To fulfill the statutory requirements relating to small business concerns <del>and labor surplus area concerns</del> , contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97-219.	(a) To fulfill the statutory requirements relating to small business concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97-219.
(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business <del>or labor surplus area</del> concerns.	(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business concerns.
(c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to <del>small business</del> set-asides.	(c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to set-asides. [FAC 90-32]
(d) <del>Subpart 20.2 prescribes policies and procedures that shall be followed with respect to labor surplus area set-asides.</del>	

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**6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
(a) (2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.	(a) (2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, <b>or (iii) to acquire the services of an expert for any current or anticipated litigation or dispute.</b> <b>(b) * * * * * (3) Use of the authority in paragraph (a)(2)(iii) of this subsection may be appropriate when it is necessary to acquire the services of either—</b> <b>(i) An expert to use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute)</b>

involving the Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, whether or not the expert is expected to testify. Examples of such services include, but are not limited to:

(A) Assisting the Government in the analysis, presentation, or defense of any claim or request for adjustment to contract terms and conditions, whether asserted by a contractor or the Government, which is in litigation or dispute, or is anticipated to result in dispute or litigation before any court, administrative tribunal, or agency, or

(B) Participating in any part of an alternative dispute resolution process, including but not limited to evaluators, fact finders, or witnesses, regardless of whether the expert is expected to testify; or

(ii) A neutral person, e.g., mediators or arbitrators, to facilitate the resolution of issues in an alternative dispute resolution process. [FAC 90-31]

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### 6.302-5 Authorized or required by statute.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>a) <i>Authority.</i></p> <p>(1) Citations: 10 U.S.C. 2304(c)(5) or 41 U.S.C. 253(c)(5).</p> <p>(2) Full and open competition need not be provided for when (i) a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or (ii) the agency's need is for a brand name commercial item for authorized resale.</p> <p>(b) <i>Application.</i> This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:</p> <p>(1) Federal Prison Industries (UNICOR)—18 U.S.C. 4124 (see Subpart 8.6);</p> <p>(2) Qualified Nonprofit Agencies for the Blind or other Severely Handicapped—41 U.S.C. 46-48c (see Subpart 8.7);</p> <p>(3) Government Printing and Binding—44 U.S.C. 501-504, 1121 (see Subpart 8.8); or</p> <p>(4) Sole source awards under the 8(a) Program—15 U.S.C. 637 (see Subpart 19.8).</p>	<p>a) <i>Authority.</i></p> <p>(1) Citations: 10 U.S.C. 2304(c)(5) or 41 U.S.C. 253(c)(5).</p> <p>(2) Full and open competition need not be provided for when (i) a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or (ii) the agency's need is for a brand name commercial item for authorized resale.</p> <p>(b) <i>Application.</i> This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:</p> <p>(1) Federal Prison Industries (UNICOR)—18 U.S.C. 4124 (see Subpart 8.6);</p> <p>(2) Qualified Nonprofit Agencies for the Blind or other Severely Handicapped—41 U.S.C. 46-48c (see Subpart 8.7);</p> <p>(3) Government Printing and Binding—44 U.S.C. 501-504, 1121 (see Subpart 8.8); or</p> <p>(4) Sole source awards under the 8(a) Program—15 U.S.C. 637 (see Subpart 19.8).</p>

(c) *Limitations.* (1) [See below for text. Para (1) is now para (3).]

(c) *Limitations.* (1) **This authority shall not be used when a provision of law requires an agency to award a new contract to a specified non-Federal Government entity unless the provision of law specifically—**

(i) **Identifies the entity involved;**

(ii) **Refers to 10 U.S.C. 2304(j) for armed services acquisitions or section 303(h) of the Federal Property and Administrative Services Act of 1949 for civilian agency acquisitions; and**

(iii) **States that award to that entity shall be made in contravention of the merit-based selection procedures in 10 U.S.C. 2304(j) or section 303(h) of the Federal Property and Administrative Services Act, as appropriate. However, this limitation does not apply—**

(A) **When the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract; or**

(B) **To any contract requiring the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an executive agency and to report on those matters to the Congress or any agency of the Federal Government.**

(2) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304, except for—

(i) Contracts awarded under (a)(2)(ii), (b)(2), or (b)(4) of this subsection; or

(ii) Contracts awarded under (a)(2)(i) of this subsection when the statute expressly requires that the procurement be made from a specified source. (Justification and approval requirements apply when the statute authorizes, but does not require, that the procurement be made from a specified source.)

(1) The authority in ~~paragraph~~ (a)(2)(ii) above may be used only for purchases of brand-name commercial items for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see 6.301(d)).

(2) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304, except for—

(i) Contracts awarded under (a)(2)(ii), (b)(2), or (b)(4) of this subsection; or

(ii) Contracts awarded under (a)(2)(i) of this subsection when the statute expressly requires that the procurement be made from a specified source. (Justification and approval requirements apply when the statute authorizes, but does not require, that the procurement be made from a specified source.)

(3) The authority in (a)(2)(ii) **of this subsection** may be used only for purchases of brand-name commercial items for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see 6.301(d)).

[FAC 90-31]

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### 6.303 Justifications.

#### 6.303-2 Content.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:</p> <p>...</p> <p>(8) A description of the market <del>survey</del> conducted (see <del>7.104</del>) and the results or a statement of the reasons a market <del>survey</del> was not conducted.</p>	<p>(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:</p> <p>...</p> <p>(8) A description of the market <b>research</b> conducted (see Part 10) and the results or a statement of the reason market <b>research</b> was not conducted. [FAC 90-32]</p>

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### 6.304 Approval of the justification.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing—</p> <p>(1) For a proposed contract not exceeding \$100,000, the contracting officer's certification required by 6.303-2(a)(12) will serve as approval unless a higher approving level is established in agency procedures.</p> <p>(2) For a proposed contract over \$100,000 but not exceeding \$1,000,000, by the competition advocate for the procuring activity designated pursuant to 6.501. This authority is not delegable.</p> <p>(3) For a proposed contract over \$1,000,000 but not exceeding \$10,000,000, by the head of the procuring activity, or a designee who—</p> <p>(i) If a member of the armed forces, is a general or flag officer; or</p> <p>(ii) If a civilian, is serving in a position in grade GS 16 or above under the General Schedule (or in a comparable or higher position under another schedule).</p> <p>(4) Except for DOD, NASA, and the Coast Guard, for a proposed contract over \$10,000,000, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. This authority is not delegable.</p>	<p>(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing—</p> <p>(1) For a proposed contract not exceeding \$100,000, the contracting officer's certification required by 6.303-2(a)(12) will serve as approval unless a higher approving level is established in agency procedures.</p> <p>(2) For a proposed contract over \$100,000 but not exceeding \$1,000,000, by the competition advocate for the procuring activity designated pursuant to 6.501 <b>or an official described in paragraph (a)(3) or (a)(4) of this section.</b> This authority is not delegable.</p> <p>(3) For a proposed contract over \$1,000,000 but not exceeding \$10,000,000, by the head of the procuring activity, or a designee who—</p> <p>(i) If a member of the armed forces, is a general or flag officer; or</p> <p>(ii) If a civilian, is serving in a position in grade GS 16 or above under the General Schedule (or in a comparable or higher position under another schedule).</p> <p>(4) Except for DOD, NASA, and the Coast Guard, for a proposed contract over \$10,000,000, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. This authority is not delegable. [FAC 90-31]</p>

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**6.501 Requirement.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>As required by Section 20 of the Office of Federal Procurement Policy Act, the head of each executive agency shall designate a competition advocate for the agency and for each procuring activity of the agency. The competition advocates shall—</p> <p>(a) Be in positions other than that of the agency senior procurement executive;</p> <p>(b) Not be assigned any duties or responsibilities that are inconsistent with 6.502 below; and</p> <p>(c) Be provided with staff or assistance (e.g., specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns), as may be necessary to carry out the advocate's duties and responsibilities.</p>	<p>As required by Section 20 of the Office of Federal Procurement Policy Act, the head of each executive agency shall designate a competition advocate for the agency and for each procuring activity of the agency. The competition advocates shall—</p> <p>(a) Be in positions other than that of the agency senior procurement executive;</p> <p>(b) Not be assigned any duties or responsibilities that are inconsistent with 6.502 below; and</p> <p>(c) Be provided with staff or assistance (e.g., specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small business concerns), as may be necessary to carry out the advocate's duties and responsibilities.</p> <p>[FAC 90-32]</p>

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**6.502 Duties and responsibilities.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>[from (a)]</p> <p><del>—(1) Be responsible for challenging barriers to and promoting full and open competition in the acquisition of supplies and services by the agency;</del></p> <p><del>—(a) Agency competition advocates shall—</del></p> <p><del>—(2) Review the contracting operations of the agency and identify and report to the agency senior procurement executive—</del></p> <p><del>—(i) Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency; and</del></p>	<p><b>(a) Agency and procuring activity competition advocates are</b> responsible for <b>promoting the acquisition of commercial items</b>, promoting full and open competition, <b>challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics, and</b> challenging barriers to <b>the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.</b></p> <p><b>(b) Agency competition advocates shall—</b></p> <p><b>(1) Review the contracting operations of the agency and identify and report to the agency senior procurement executive—</b></p> <p><b>(i) Opportunities and actions taken to acquire commercial items to meet the needs of the agency;</b></p> <p><b>(ii) Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency;</b></p>

—(ii) Any condition or action that has the effect of unnecessarily restricting competition in the contract actions of the agency;

—(3) Prepare and submit an annual report to the agency senior procurement executive, in accordance with agency procedures, describing—

(i) Such advocate's activities under this subpart;

—(ii) New initiatives required to increase competition;

—(iii) Any barriers to full and open competition that remain; and

—(iv) Other ways in which the agency has emphasized competition in areas such as acquisition training and research;

—(4) Recommend to the senior procurement executive of the agency goals and plans for increasing competition on a fiscal year basis; and

—(5) Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.

—(b) ~~Procuring activity competition advocates designated pursuant to 6.501 shall be responsible for—~~

—(1) ~~Promoting full and open competition in the procuring activity; and~~

—(2) ~~Challenging barriers to such competition, including unnecessarily detailed specifications and unnecessarily restrictive statements of need.~~

(iii) Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;

**(iv) Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contracting actions of the agency;**

(2) Prepare and submit an annual report to the agency senior procurement executive, in accordance with agency procedures, describing—

(i) Such advocate's activities under this subpart;

**(ii) New initiatives required to increase the acquisition of commercial items;**

(iii) New initiatives required to increase competition;

**(iv) New initiatives to ensure requirements are stated in terms of functions to be performed, performance required or essential physical characteristics;**

(v) Any barriers to **the acquisition of commercial items or** competition that remain; and

(vi) Other ways in which the agency has emphasized **the acquisition of commercial items and** competition in areas such as acquisition training and research.

(3) Recommend to the senior procurement executive of the agency goals and plans for increasing competition on a fiscal year basis; and

(4) Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.

[FAC 90-32]